

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

Allan D. Samia,

Case No. 2:23-cv-01384-RFB-DJA

Plaintiff,

Order

V.

Brandon Levell, et al.,

Defendants.

Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and *in forma pauperis*. Plaintiff has submitted an amended complaint, which the Court screens. (ECF No. 15). Because the Court finds that Plaintiff's amended complaint does not properly assert sufficient facts, it dismisses his complaint with leave to amend.

I. Legal standard for screening.

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*

1 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
 2 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
 3 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v.*
 4 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
 5 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
 6 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
 7 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the
 8 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
 9 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings
 10 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
 11 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

12 Federal courts are courts of limited jurisdiction and possess only that power authorized by
 13 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
 14 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
 15 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
 16 federal law creates the cause of action or where the vindication of a right under state law
 17 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
 18 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
 19 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
 20 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
 21 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal
 22 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
 23 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of
 24 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete
 25 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each
 26 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

27
 28

1 **II. Screening the complaint.**

2 Plaintiff sues Hudson by Avolta,¹ its regional vice president Stephen Kim, its general
3 manager Brandon Levell, its assistant general manager Richard Marques, and its “HR business
4 partner director” Chuck Janssen. (ECF No. 15 at 1, 2). He states that the basis for this Court’s
5 jurisdiction is federal question jurisdiction. (*Id.* at 3). However, he otherwise provides no factual
6 allegations.

7 Instead, Plaintiff includes a letter asking the Court for a hearing date and asking how he
8 can prove his case to the Court. (ECF No. 15 at 4). However, Plaintiff’s case is not ripe for a
9 hearing because he has not yet filed a successful operative complaint that has passed screening.
10 Additionally, the Court cannot provide Plaintiff with advice about how to successfully present his
11 case.

12 Because Plaintiff does not provide any factual detail about his claims, he does not state a
13 claim upon which relief can be granted. The Court will thus give him one more chance to amend
14 his complaint. In any amendment, Plaintiff must do his best to describe the facts underlying his
15 claims in detail. He should provide facts describing the who, what, where, when, and how of his
16 claims.

17
18 **IT IS THEREFORE ORDERED** that the amended complaint (ECF No. 15) is
19 **dismissed without prejudice** for failure to state a claim upon which relief can be granted, with
20 leave to amend. Plaintiff will have until **October 30, 2024** to file an amended complaint if the
21 noted deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is
22 informed that the Court cannot refer to a prior pleading (i.e., the original complaint) to make the
23 amended complaint complete. This is because, generally, an amended complaint supersedes the
24 original complaint. Local Rule 15-1(a) requires that an amended complaint be complete without
25 reference to any prior pleading. Once a plaintiff files an amended complaint, the original
26 complaint no longer serves any function in the case. Therefore, in an amended complaint, as in

27
28 ¹ Plaintiff only includes this Defendant in the caption but does not otherwise list it as a Defendant.

1 an original complaint, each claim and the involvement of each Defendant must be sufficiently
2 alleged. **Failure to comply with this order will result in the recommended dismissal of this**
3 **case.** The Clerk of Court is kindly directed to send a copy of this order to Plaintiff.

4

5

DATED: September 30, 2024

6

7


DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28